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Public Necessity Rules
of the
Tennessee Regulatory Authority


Chapter 1220-4-13
Wastewater Regulations

New Rules

Statement of Necessity Requiring Public Necessity Rules

Public Acts of 2005, Chapter 62 makes certain changes in state law regarding the provision of wastewater services by public utilities. Specifically, amendments to Tenn. Code Ann. § 65-4-201 require the Tennessee Regulatory Authority to promulgate rules directing the posting of security to ensure the continued operation of public utilities that provide wastewater services. The Legislature mandated that the Tennessee Regulatory Authority shall establish rules, forms, and any necessary standards and procedures to implement certain financial security requirements, and specifically authorized that such forms and rules may be promulgated as public necessity rules. *See* Tenn. Code Ann. § 65-4-201(e)(3).

For a complete copy of these public necessity rules, please contact Chairman Ron Jones, Tennessee Regulatory Authority, 460 James Robertson Pkwy., Nashville, TN 37243, telephone 615-741-3668.


J. Richard Collier, General Counsel
Tennessee Regulatory Authority

Public Necessity Rules
of the
Tennessee Regulatory Authority

Chapter 1220-4-13
Wastewater Regulations

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1220-4-13- 01 APPLICATION AND PURPOSE

- (1) These rules shall apply to public wastewater utilities as defined in these rules and in Tenn Code Ann § 65-4-101
- (2) The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

Authority Tenn Code Ann § 65-2-102

1220-4-13- 02 DEFINITIONS

- (1) Authority - Tennessee Regulatory Authority.
- (2) Certificate of Public Convenience and Necessity or CCN – certificate required for a public utility to establish, construct or operate utility service in a specified area, pursuant to Tenn Code Ann § 65-4-201 et seq
- (3) Customer - any person, firm, corporation, association, or governmental unit that receives wastewater service from a public wastewater facility
- (4) Local government – any political subdivision of the state of Tennessee, including, but not limited to a county or incorporated municipality
- (5) Public utility or public wastewater utility - any person, partnership, corporation, company, association, receiver or two or more persons having a joint or common

interest that owns, operates, and manages any public wastewater system for compensation within the state subject to the jurisdiction of the Authority

- (6) TDEC – Tennessee Department of Environment and Conservation
- (7) Wastewater system - any structure, land, equipment, or process for collecting, storing, treating, or disposing of wastewater, including but not limited to, tanks, pipes, pumps, and filters
- (8) Reporting Period – the twelve (12) month period from May 1 through April 30, during which actual security costs are netted against security costs that have been recovered (collected) from the customers of the public wastewater utility by means of a rate adjustment established in a tariff that is filed with the Authority each July 1

Authority Tenn Code Ann § 65-2-102

1220-4-13- 03 RETENTION OF RECORDS

Unless otherwise specified by the Authority, all records required by these rules shall be preserved for a minimum period of three (3) years. All records shall be kept at the main office of the public wastewater utility in Tennessee and shall be made available to the Authority or its authorized representatives upon request.

Authority Tenn Code Ann §§ 65-2-102 and 65-4-104

1220-4-13- 04 DOCUMENTS TO BE FILED WITH THE AUTHORITY

The public wastewater utility shall file with the Authority the following documents and information, and shall refile such documents to keep such information up to date. Rates, schedules, special contracts, and other charges for, and the utility's operating rules and regulations governing wastewater service shall not become effective until filed with and declared effective by the Authority.

- (a) A copy of the public wastewater utility's tariff as specified in Rule 1220-4-1- 02 that includes the rates, rules, terms and conditions, and that describes the policies and practices in rendering service that conform to all applicable rules and regulations, shall be filed with the Authority.
- (b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1- 03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13- 07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn Code Ann § 65-4-201 and these rules.
- (c) Before initiation of service, the public wastewater utility shall file with the Authority the following

- 1 TDEC approval of the wastewater system design

- 2 As-Built certification by wastewater system's design engineer that states that it was constructed according to plans and specifications approved by TDEC
 - 3 TDEC permit for the wastewater system
- (d) Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year. The report shall be in compliance with these rules and all other requirements established by the Authority.

Authority Tenn Code Ann §§ 65-2-102, 65-4-104, and 65-4-201

1220-4-13- 05 MAPS AND RECORDS

- (1) Each public wastewater utility shall keep on file in its main office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.
- (2) Each public wastewater utility shall keep a record of all interruptions of service of its wastewater system, including a statement of time, duration, and cause of such interruptions

Authority Tenn Code Ann §§ 65-2-102 and 65-4-104

1220-4-13- 06 ADEQUACY OF FACILITIES

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local government agencies to assure, as far as reasonably possible, continuity of service and uniformity in the quality of service so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to assure safe, adequate and continuous service at all times by qualified staff, and shall make inspections on a regular basis. These inspection records shall be maintained by the public wastewater utility for a minimum of three (3) years
- (3) Each public wastewater utility shall provide service in the area described in its CCN within a reasonable period of time. If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, or finds that extension of service to any such customer could be accomplished only at an unreasonable cost and that addition of the designated service area to that of another provider of wastewater services is economical and feasible, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that public wastewater utility
- (4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve within two (2) years after the date of authorization for service to such part, whether or not there has been a demand for such service, the Authority may require the public wastewater utility to demonstrate that it intends to provide service in the area or part thereof, or that

based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation or amendment of a CCN

- (5) In the case of a public wastewater utility authorized to provide service at the time these rules become effective, the requirements of paragraph (4) shall apply to such public wastewater utility two (2) years after the effective date of the rules
- (6) Any action by the Authority to revoke or amend a CCN shall be taken in accordance with Tenn Code Ann § 65-2-106 and after notice and an opportunity to be heard

Authority Tenn Code Ann §§ 65-2-102, 65-2-106, 65-4-104, 65-4-203, and 65-4-114

1220-4-13- 07 FINANCIAL SECURITY

- (1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the Authority, prior to providing service to a customer, acceptable financial security in an amount not less than \$20,000 using a format prescribed by the Authority. The public wastewater utility shall ensure that such financial security is maintained in continuous force in conformity to these rules
- (2) Proof of financial security shall be furnished to the Authority for review and approval as follows
 - (a) The amount of financial security required by public wastewater utilities holding a CCN at the time these rules become effective shall be one hundred percent (100%) of the gross annual revenue in the most recent Authority Form UD20 or, if a UD20 has not been filed, the estimated gross annual revenue forecasted in the CCN application submitted to the Authority. A public wastewater utility holding a CCN at the time these rules become effective shall file proof of the required financial security with the Authority seventy-five (75) days after the effective date of these rules
 - (b) Public wastewater utilities submitting their initial application for a CCN shall be required to present to the Authority, prior to approval of this application, proof of financial security in the amount of one hundred percent (100%) of the forecasted gross annual revenue from the wastewater system project(s) submitted in the application for a CCN
 - (c) The Authority shall review each subsequent UD20, existing financial securities pursuant to local government requirements and any other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.
- (3) Sufficient financial security shall be provided in one of the following manners:
 - (a) A bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee, or
 - (b) An irrevocable letter of credit issued by a financial institution acceptable to the Authority

- (4) The public wastewater utility shall provide written notification by means of both certified mail (return receipt requested) and regular mail to the Authority and the holder of the financial security at least sixty (60) days prior to any termination action, expiration date for an irrevocable letter of credit that will not be renewed, or the expiration date for a bond of non-perpetual duration that is not to be renewed
- (5) If the public wastewater utility proposes to post financial security other than that permitted above, a hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule 1220-4-13-07(2) until the alternative financial security is approved by the Authority.
- (6) Financial securities required by any local government may be considered by the Authority as fulfilling this financial security obligation. The public wastewater utility shall file with the Authority evidence of this financial security and a written request that the Authority consider the security as fulfilling the requirements of this Chapter
- (7) The cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on a case by case basis.
 - (a) Each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the pass-through mechanism. The tariff filing shall contain a price-out calculation (number of customers multiplied by the pass-through mechanism) supporting the amount of increase proposed and the percentage increase this represents. This supporting calculation shall be based on the cost of the financial security to the public wastewater utility, the number of customers forecasted for the ensuing twelve (12) month period of operations, and the current approved monthly customer rates. Where applicable, a separate increase shall be calculated for residential and commercial customers
 1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff shall be submitted to the Authority within thirty (30) days of the effective date of the financial security
 2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff shall be submitted to the Authority with the CCN application
 - (b) On July 1 of each year, each public wastewater utility shall file proof of security and a tariff with the Authority for its consideration, containing a true-up calculation for the preceding reporting period and updating the financial security pass-through percentage calculation going forward. The tariff filing shall include, but not be limited to, the following
 - 1 The actual financial security costs for the most recent twelve (12) month reporting period ended April 30. For the first year this rule is in effect and the first year of operations in the case of a new

CCN or amended CCN, the true-up calculation shall be based on the actual months the security was in effect during the reporting period ended April 30

- 2 The actual financial security costs collected from its customers during the previous twelve (12) months reporting period or part thereof
 - 3 A true-up calculation to establish the amount of refund or surcharge due to or required from its customers going forward. Any residual over-collection or under-collection from the prior reporting period shall be subtracted from or added to the estimated financial security cost to calculate the rate adjustment in effect for the remainder of the next twelve (12) month reporting period
 - 4 The new rate adjustment stated as an amount to be reflected on a customer's bill and the corresponding percentage adjustment.
- (8) Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall meet the conditions as specified by the Authority. The public wastewater utility shall file bank statements and a report that details the expenses on all disbursements from the escrow account with its annual report or as the Authority may direct. Public wastewater utility employees having signature authority over such account may be subject to a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account
- (9) The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. Within eighteen (18) months from the effective date of these rules, the Authority shall review the financial condition of any public wastewater utility holding a CCN to provide wastewater service as of the effective date of these rules to determine whether such wastewater utility shall establish or adjust the amount of a reserve/escrow account as described in this Chapter. The financial condition of any applicant seeking a CCN to provide wastewater service after the effective date of these rules shall be reviewed by the Authority and a determination shall be made regarding the establishment of a reserve/escrow account during the CCN application process. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established

Authority Tenn Code Ann §§ 65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305

1220-4-13- 08 STANDARD FORMS FOR FILING FINANCIAL SECURITY

- (1) The following is a form to be used by wastewater service providers under the jurisdiction of the Tennessee Regulatory Authority when filing a corporate surety bond pursuant to this Chapter

CORPORATE SURETY BOND

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

REFERENCE Name of Company authorized by TRA

Company ID # as assigned by the TRA
Corporate Surety Bond #
Effective Date
Expiration Date

(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety") are bound to the State of Tennessee in the sum of _____ Dollars (\$ _____), and Principal and Surety hereby bind themselves, their successors and assigns, to pay in accordance with the following terms

THE CONDITION OF THIS BOND IS

The Principal is or intends to become a public wastewater utility subject to the laws of the State of Tennessee and the rules and regulations of the Tennessee Regulatory Authority ("Authority"), relating to the operation of a public wastewater utility (describe utility and location

_____)

Tennessee Code Annotated § 65-4-201 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Authority, conditioned as prescribed in Tenn Comp R & Regs Chapter 1220-4-13

The Principal and Surety have delivered to the Authority a Surety Bond with an endorsement as required by the Authority

After notice to the Principal and Surety and a contested case hearing that results in the suspension or revocation of the Principal's Certificate of Public Convenience and Necessity (CCN), the replacement of an operator by the Authority, or the appointment of a receiver by a court, the Authority may assess a sum sufficient of this bond, up to its maximum sum, to enable the continued operation of the public wastewater utility

The Principal and the Surety are held and firmly bound to the State of Tennessee, in accordance with the provisions of Tenn Comp R & Regs Chapter 1220-4-13, in the amount of _____ Dollars (\$ _____) lawful money of the United States of America to be used for the full and prompt payment of any monetary obligation imposed against the Principal, its representatives, successors or assigns, in any contested case proceeding brought under Chapter 1220-4-13, by or on behalf of the Authority, for which obligation the Principal and the Surety bind themselves, their representatives, successors and assigns, each jointly and severally, firmly and unequivocally by these presents

Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, and delivery to the Surety of a Bond Notice, substantially in the form set forth below ("Notice"), the Surety promises to pay, by wire transfer of immediately available funds, the amount of the monetary obligation as stated in the Order and Notice.

If for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Tennessee Regulatory Authority, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period

Failure to renew the Surety Bond shall operate to forfeit the Surety Bond, without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or CCN. In such an event and upon a directive from the Authority, the Surety agrees to deposit the maximum sum of this Surety Bond with the administrator of the Authority's bonding program to enable the continued operation of the public wastewater utility

The bond shall become effective after execution by the Principal and Surety and upon filing with the Authority, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Authority in writing.

The Principal and Surety consent to the conditions of this Bond and agree to be bound by them

This ____ day of _____ 20__

(Principal)

(Surety)

By _____

FORM OF
BOND NOTICE

(Name of Surety)
(Address)

Re Bond No (____)

Dear Sir or Madam

You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars (\$_____) (the "Draw Amount") has been imposed against (Principal) its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority

Pursuant to the bond referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds

Name of Bank Account
Account Number
ABA Routing Number
Reference
Name of Contact

Telephone Number
Facsimile Number

Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above

Sincerely,

TENNESSEE REGULATORY AUTHORITY

Name
Title

- (2) The following is a form to be used by wastewater service providers under the jurisdiction of the Tennessee Regulatory Authority when filing an irrevocable letter of credit pursuant to this Chapter.

LETTER OF CREDIT

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

REFERENCE Name of Company authorized by TRA

Company ID # as assigned by the TRA
Irrevocable Letter of Credit #
Effective Date

Sir/Madam

You have requested of (name of Financial Institution, hereinafter called the "Lender") that we establish an irrevocable letter of credit which will remain available on behalf of (name of the Principal, hereinafter the "Company") who has applied to the Tennessee Regulatory Authority (the "Authority") for authority to provide public wastewater services in the state of Tennessee. The purpose of this letter of credit is to secure payment of any monetary obligation imposed against the Company, its representatives, successors or assigns, in any contested case proceeding brought under Tenn. Comp R & Regs. Chapter 1220-4-13 by or on behalf of the Authority

We hereby establish and issue, in favor of the Authority, an irrevocable letter of credit in the amount of _____ Dollars (\$ _____) lawful money of the United States of America Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, the Authority may draw upon this letter of credit, at any time and from time to time, by delivering a Letter of Credit Notice, substantially in the form set forth below ("Notice"), which Notice shall specify the amount (the "Draw Amount") to be drawn and the account (the "Bank Account") to which the Draw Amount should be delivered and shall be signed by an official designated and duly authorized by the Authority, to Lender at the address listed below, or to such other address as the Lender shall notify the Authority in writing by certified mail Promptly after the delivery of each Notice, the Lender hereby covenants and agrees to deliver, by wire transfer of immediately available funds, the Draw Amount to the Bank Account

This letter of credit shall be deemed automatically renewed without amendment for successive one-year periods and may be canceled by the Lender by giving thirty (30) days advanced written notice by certified mail of such cancellation to the Authority and the Company, it being understood

that the Lender shall not be relieved of liability that may have accrued under this letter of credit prior to the date of cancellation

Failure to renew this letter of credit shall allow the Authority to draw upon it without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or Certificate of Public Convenience and Necessity. In such an event and upon a directive from the Authority, the Lender hereby covenants and agrees to deliver by wire transfer of immediately available funds the maximum sum of this letter of credit to the Bank Account to enable the continued operation of the public wastewater utility.

The Lender hereby represents and warrants that it is qualified and authorized to issue this letter of credit and is a bank designated by the Treasurer of the State of Tennessee as an authorized depository bank for the deposit of state funds.

Except as otherwise expressly stated, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision) International Chamber of Commerce Publication No. 500, or any revisions thereto.

Very Truly Yours,
(Name of Lending Institution)
Name:
Title:
Address of Lender:

APPROVAL AND ENDORSEMENT

This is to certify that I have examined the foregoing letter of credit and found the same to be sufficient and in conformity to law and that the same has been filed with the Tennessee Regulatory Authority, State of Tennessee, this ____ day of _____, 20____

Name
Title

FORM OF LETTER OF CREDIT NOTICE

(Name of Lender)
(Address)

Re Irrevocable Letter of Credit No (____)

Dear Sir or Madam

You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars (\$_____) (the "Draw Amount") has been imposed against (Principal), its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority.

Pursuant to the Irrevocable Letter of Credit referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds.

Name of Bank Account
Account Number
ABA Routing Number

Reference
Name of Contact
Telephone Number
Facsimile Number

Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above

Sincerely,

TENNESSEE REGULATORY AUTHORITY

Name
Title

1220-4-13- 09 PROCEDURE FOR SUSPENSION OR REVOCATION OF CCN, FORFEITURE OF WASTEWATER UTILITY FUNDS, AND CLAIMS AGAINST FINANCIAL SECURITY

- (1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action based on good cause that may include suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security
- (2) Good cause shall include, but is not limited, to the following
 - (a) A finding by the Authority of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Authority relating to the same
 - (b) A finding by the Authority of
 - 1 Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the public wastewater utility,
 2. Criminal conduct on the part of the public wastewater utility;
 3. Actual, threatened or impending insolvency of the public wastewater utility,
 4. Actual or threatened abandonment of the public wastewater utility by its owners or its operators,
 - 5 Persistent, serious, substantial violations of statutes or regulations governing the public wastewater utility, or

6 Failure or inability on the part of the wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance

- (3) In addition to the above, the Authority may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security.
 - (a) Whether, to the extent practicable, service to customers will remain uninterrupted under an alternative public wastewater utility or a designated third party capable of providing adequate wastewater service, including a trustee or receiver appointed by the appropriate court,
 - (b) Whether there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods, or whether there are no practicable methods to mitigate the financial consequences to customers, and
 - (c) Such other factors as the Authority deems relevant to the determination to suspend or revoke a CCN
- (4) Proceedings before the Authority for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security shall be conducted in accordance with Tenn Code Ann. § 65-2-106 and after notice and an opportunity to be heard, unless the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public. In such exigent circumstances, the Authority may order the summary suspension of the CCN and follow the procedures as set forth in Tenn Code Ann § 4-5-320

The Authority will not seek to suspend or revoke a public wastewater utility's CCN, to forfeit the wastewater utility funds, or make a claim against the public wastewater utility's financial security for good cause without first affording the public wastewater utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for such action unless

- (a) the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public, or
- (b) a public wastewater utility is unable to provide safe, adequate, and reliable wastewater service

Authority Tenn Code Ann §§ 4-5-320, 65-2-102, 65-2-106, 65-4-104, and 65-4-201

1220-4-13- 10 TITLE OF PHYSICAL ASSETS AND SALE, TRANSFER, MERGER, TERMINATION, ACQUISITION, OR ABANDONMENT

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn Code Ann. § 65-4-109

- (2) Any person, lessee, trustee, or receiver owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer, merge with another public wastewater utility, or intends to terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. This procedure shall also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the wastewater system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the public wastewater utility customers.
- (3) The Petition filed with the Authority shall include the following
 - (a) The name, address, and telephone number of the public wastewater utility
 - (b) The identity of the person(s) to contact regarding the Petition with their address, telephone number, and fax number
 - (c) The location of the public wastewater utility's books and records
 - (d) The purpose and filing date of the Petition
 - (e) The proposed effective date of the transaction
 - (f) The name, address, and telephone number of any potential buyer
 - (g) A statement as to whether the proposed action impacts a water system in addition to the wastewater system, together with sufficient identifying information for any affected water system.
 - (h) A statement as to the reason(s) for the sale, transfer, merger, termination, acquisition, or abandonment of the wastewater system.
 - (i) A statement from TDEC regarding the status of the wastewater system including any outstanding citations or violations
 - (j) A statement detailing the effect of the transaction upon customers
 - (k) A copy of the customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no less than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider of wastewater services. Good cause includes, but is not limited to, evidence that the current provider is no longer providing wastewater service in Tennessee.

1220-4-13- 11 RECEIVERSHIPS OR OTHER TRANSFERS OF OPERATION OR OWNERSHIP

- (1) Where the actions of a public wastewater utility demonstrate an unwillingness or inability to effectively operate and manage the wastewater system(s) as set forth in Rule 1220-4-13- 09 above, the funds of that public wastewater utility, including escrow accounts and any other financial security posted under this rule, shall be subject to forfeiture, after notice and hearing, in the event that the public wastewater utility goes into receivership or is transferred, for any reason, to another owner or operator. In addition, after notice and hearing, the Authority may take the following actions
 - (a) Provide for the acquisition of the public wastewater utility by another public wastewater utility, a local government, or by another entity that has demonstrated the ability to
 - 1 Operate the wastewater system(s) in compliance with law and the Authority's orders, and,
 - 2 Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority
 - (b) Petition the appropriate court for the appointment of a receiver that has demonstrated the ability to.
 - 1 Operate the wastewater system(s) in compliance with law and the Authority's orders, and,
 - 2 Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority
- (2) Before taking such action as provided in subparagraphs (1)(a) or (b), the Authority shall give notice of the hearing to the following
 - (a) The subject public wastewater utility
 - (b) Other public wastewater utilities in Tennessee
 - (c) All agencies and political subdivisions, including all local governments, located in or in reasonable proximity to the public wastewater utility's service territory for the subject wastewater system
 - (d) Holder of the security
- (3) An order under subparagraph (1)(a) shall provide
 - (a) that the entity acquiring the subject wastewater system(s) shall pay the fair market value at the time of acquisition, and
 - (b) the specific accounting methods and appraisal procedures and terms by which the fair market value of the subject wastewater system(s) is to be determined
- (4) An order under paragraph (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following

- (a) A mechanism for expediting any adjustments to the rates of the entity acquiring the subject public wastewater utility.
 - (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases
 - (c) Other incentives to the entity acquiring the subject public wastewater utility
- (5) If a receiver is appointed by the court as provided in subparagraph (1)(b), the Authority authorizes the receiver to
 - (a) Have the same rights and duties under Tennessee law as a public wastewater utility
 - (b) Continue to operate the subject wastewater system(s) until the court finds that the subject public wastewater utility
 - 1. has the ability to comply and shall comply with Tennessee law and the Authority's orders relating to the operation and management of the subject wastewater system(s), and
 - 2. has the ability to operate and manage the subject wastewater system(s) without any of the deficiencies determined by the Authority
- (6) Upon appointment of a receiver or transfer to another owner or operator, the receiver or new owner or operator shall immediately notify customers affected by the changes and inform them of the nature of the receivership or transfer
- (7) If a receiver is appointed by the court
 - (a) The receiver shall, within thirty (30) days of appointment, file a proposed revision to the tariff of the subject public wastewater utility amending the title page to reflect the name, address and telephone number of the receiver,
 - (b) The receiver appointed to operate, maintain, and repair the wastewater system(s) shall be or employ a person that holds a valid, current, and applicable license issued by TDEC's Water and Wastewater Operator's Certification Board,
 - (c) The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority, and
 - (d) The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the wastewater system(s).
- (8) At the conclusion of services rendered by the receiver, the Authority shall approve a final accounting of all monies and disbursement of surplus funds

1220-4-13- 12 CUSTOMER RELATIONS

Each public wastewater utility shall comply with applicable provisions of Rule 1220-4-3- 14 including, but not limited to, the following.

- (1) Each public wastewater utility shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.
- (2) The public wastewater utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints that are received by the public wastewater utility. If the written complaint relates to a service problem, the record shall include appropriate identification of the customer or service issue, the time, the date, and the action taken to alleviate the trouble or satisfy the written complaint. This record shall be available to the Authority upon request.
- (3) Each public wastewater utility, within ten (10) business days after being notified of a customer complaint filed with the Consumer Services Division of the Authority, shall file a written response to that complaint with the Authority's Consumer Services Division.
- (4) Each public wastewater utility shall provide a means by which it may be contacted at any time in the event of a service failure or emergency or by which a customer or applicant may leave a message reporting such failure or emergency.
- (5) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the public wastewater utility.

Authority Tenn Code Ann. §§ 65-2-102 and 65-4-104

1220-4-13- 13 CUSTOMER BILLING

- (1) The Authority shall approve the rates that are included in the tariff submitted by the public wastewater utility before customers are charged for wastewater services. All bills for wastewater service shall state how the charge is calculated. The bill/statement shall contain the name, address, and telephone number of the public wastewater utility's main office. A bill based upon water usage shall include applicable language as found in Rule 1220-4-3- 16.
- (2) Bills shall be rendered at regular intervals as described in the public wastewater utility's approved tariff. Public wastewater utilities shall not send a customer two successive estimated bills, except due to extenuating circumstances.
- (3) No public wastewater utility shall charge, demand, collect or receive any greater, less, or different compensation for provision of wastewater service or for any service connected therewith, than those rates and charges approved by the Authority and in effect at the time of service. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate (e.g., high strength effluent), and a contract or tariff setting the different rate has been filed and approved by the Authority.

- (4) Where a public wastewater utility finds that through no fault of the customer the customer's wastewater service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the public wastewater utility of the interruption, the public wastewater utility shall refund to that customer the pro-rata portion of the month's charges for the period of days during which the service was not provided. The public wastewater utility may refund the amount owed as a credit toward the customer's subsequent bill for service. This paragraph applies only to public wastewater utilities having service tariffs that provide for charges on a non-metered rate.
- (5) Bills which are incorrect due to meter or billing errors shall be adjusted as found in Rule 1220-4-3-.18. The public wastewater utility shall retain customer billing records for not less than three (3) years.

Authority Tenn Code Ann §§ 65-2-102 and 65-4-104

1220-4-13- 14 DENYING OR DISCONTINUING SERVICE

- (1) No public wastewater utility shall deny or discontinue service to any customer without first providing notice to the customer and diligently trying to induce the customer to comply with its rules and regulations, provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider. When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority. A customer who has had service denied or discontinued has the right to a contested case hearing.
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing to a "Subscription Service Contract" that would for the reasons listed in this part allow either.
 - (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the Authority, and this rule, or
 - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service shall be discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the Authority prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.
- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer

- (a) Non-payment for service by a previous occupant of the premises to be served
 - (b) Failure to pay for merchandise or special services purchased from the public wastewater utility
 - (c) Failure to pay the bill of another customer as guarantor thereof
 - (d) Failure to pay for a different type or class of public wastewater utility service
- (4) The public wastewater utility's tariff on file with the Authority shall define all terms and conditions as they relate to denying or discontinuing wastewater service

Authority Tenn Code Ann §§ 65-2-102 and 65-4-104

1220-4-13- 15 RECONNECTION

The public wastewater utility's tariff on file with the Authority shall define actions of the public wastewater utility to promptly restore service to the customer in all cases of discontinuance of service where the cause for discontinuance has been corrected, and there has been compliance with all rules of the public wastewater utility on file with the Authority

Authority Tenn Code Ann. §§ 65-2-102 and 65-4-104

Legal Contact and/or party who will approve final copy for publication and contact for disk acquisition

J Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243
(615) 741-2904, extension 170

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules

J. Richard Collier
J. Richard Collier, General Counsel

The roll-call vote by the Tennessee Regulatory Authority on these public necessity rules was as follows

	Aye	No	Abstain
Ron Jones, Chairman	X		
Deborah Taylor Tate, Director	X		
Pat Miller, Director	X		
Sara Kyle, Director	X		

I certify that this is an accurate and complete copy of public necessity rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority on the 26th day of September, 2005

Further, I certify that the provisions of Tenn Code Ann § 4-5-222 have been fully complied with, that these rules are properly presented for filing

J. Richard Collier
J. Richard Collier, General Counsel

Subscribed and sworn to before me this the 29th day of December, 2005.

Lynda Lu Perrin
Notary Public

My commission expires on the 28th day of May, 2006

All public necessity rules provided for herein have been examined by the Attorney General & Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, Section 211

Paul G. Summers
Paul G Summers
Attorney General & Reporter

The public necessity rules set out herein were properly filed in the Department of State on the 29th day of Dec., 2005, and will become effective on the 18 day of June, 2006.

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SECRETARY OF STATE

Riley C Darnell
Riley C Darnell, Secretary of State
By. [Signature]